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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ARTEMIO ELGUEA, Plaintiff and Appellant, v. SOUTHERN CALIFORNIA PIZZA COMPANY, LLC, et al., Defendants and Respondents.	B281867 (Los Angeles County Super. Ct. No. BC615639)

APPEAL from a judgment of the Superior Court of Los Angeles County. Deirdre H. Hill, Judge. Affirmed.

Law Offices of Maryann P. Gallagher and Maryann P. Gallagher for Plaintiff and Appellant.

Seyfarth Shaw, Jon D. Meer and Pantea Lili Ahmadi for Defendants and Respondents.

Plaintiff Artemio Elguea brought suit against his employer, Southern California Pizza Company, LLC, alleging age discrimination, related causes of action under the Fair Employment and Housing Act (FEHA) and other torts. The employer obtained judgment on the pleadings based on a release Elguea had signed in workers' compensation proceedings, which specifically included a release of FEHA and other claims. Elguea appeals, contending the release is not binding for multiple reasons. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Allegations of the Complaint*

Plaintiff, aged 65, was a pizza delivery driver for Pizza Hut. The general manager of the Pizza Hut location where Elguea worked was Alex Rodriguez. Elguea alleged that Rodriguez discriminated against him on the basis of his age – reducing his hours, stealing his tips, and allowing other employees (who were related to Rodriguez) to throw food at him. Elguea complained to corporate and eventually Rodriguez left, but his replacement allowed the other employees to continue to harass Elguea. Elguea's doctor placed him on medical leave for stress, and he never returned to Pizza Hut. He alleged he was constructively terminated on April 11, 2014.

Plaintiff filed his complaint on April 1, 2016. He alleged causes of action for various FEHA and related claims including age discrimination and harassment.

The identity of the employer defendant named in Elguea's complaint would be an issue in this case – specifically, whether the defendant in this action was the same employer who was released in the workers' compensation release. Elguea originally named two different employer defendants in his complaint:

Southern California Pizza Company, LLC (the LLC); and Southern California Pizza Company dba Pizza Hut, Inc. (the Inc.). Elguea's complaint made no effort to further identify the defendants or explain their relationship; he simply alleged that they were both Elguea's employer. Elguea named both the LLC and the Inc. in all of his causes of action.

On December 9, 2016, the parties filed a stipulation regarding the Inc. Specifically, "[b]ased on representations by counsel for [the LLC] that [the Inc.] had no involvement whatsoever in this action or with Plaintiff's complaints, and was not an employer or owner of Southern California Pizza Company," Elguea agreed to dismiss the Inc. without prejudice. The parties agreed that the stipulation would not preclude Elguea "from seeking to continue to determine whether [the Inc.] is a proper defendant in this action, including whether the dismissed party is or has been an employer or joint employer of Plaintiff." Elguea filed the request for dismissal of the Inc. as agreed.

Thus, the remaining Southern California Pizza defendant was the LLC. Rodriguez was also a named defendant in a claim for intentional infliction of emotional distress.

2. *The Parallel Workers' Compensation Proceedings*

While this action was pending, Elguea was also pursuing multiple workers' compensation claims. The defendant/employer in the workers' compensation complaints was identified as "Southern California Pizza Co."

According to the record, there were four workers' compensation claims, seeking compensation for both physical and

psychological injuries, suffered both on specific dates and cumulatively.[1]

On December 1, 2016, the four workers' compensation cases were resolved by two simultaneous settlements, each for slightly less than $25,000. It would ultimately be explained that the settlement was originally a unified settlement for $50,000, but the parties agreed to separate it into two settlements of less than $25,000 for reasons irrelevant to this appeal.

Each of the two settlements was documented in a Compromise & Release which was approved by a workers' compensation administrative law judge in a written order. Each Compromise & Release was signed by Elguea, and one of his workers' compensation attorneys, Diana Sparagna, on November 23, 2016.

Each Compromise & Release had an addendum attached to it, which specifically stated the following: "This Compromise & Release also includes resolution of all claims arising under any

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[1] Specifically, the four workers' compensation cases were:

(1) ADJ9395559 – alleging a specific neck injury, suffered on January 1, 2013;

(2) ADJ9934460 – alleging cumulative injuries, suffered between September 1, 2013 and April 11, 2014, to Elguea's head, upper extremities, back, shoulder, psyche, lower extremities, digestive system, neck, fingers, and other systems;

(3) ADJ973665 – alleging cumulative injuries, suffered between April 4, 2007 and February 27, 2014, to Elguea's head, neck, hand, back, upper extremities, lower extremities, waist, digestive system, psyche, internal systems, sleep, and other body systems; and

(4) ADJ10664713 – alleging a specific injury, suffered on January 18, 2013, to Elguea's head, neck, upper extremities, back, psyche, sleep, extremities, and internal systems.

state or federal law regulation, including the California Fair Employment and Housing Act, federal and state wage and hour laws, federal and state False Claims Acts, Title VII of the Civil Rights Act, the Americans With Disabilities Act, the Family Medical Leave Act, the California Family Rights Act, the California Labor Code, and any and all other federal, state or local laws or regulations relating to wage and hour issues, breach of contract, discrimination, harassment, retaliation, public policy, wrongful discharge, disability, compensation, and any other claims relating to or arising out of the relationship between Applicant and Defendant, and any and all alleged injuries Applicant may have suffered arising out of that relationship and those dealings up to and including the date Applicant executes this Compromise & Release. This Release does not include claims that cannot be waives [sic] as a matter of law." The last paragraph of the addendum states: "The foregoing has been read, explained and understood. If appropriate, an interpreter has been used." Each addendum was signed by Elguea and his attorney. There is a line for an interpreter to sign; it is left blank.

3. *Counsel in this Action Learn of the Releases*

In December 2016, counsel for the LLC wrote litigation counsel for Elguea, requesting dismissal of this action based on the workers' compensation releases.

On December 28, 2016, Elguea's counsel refused to dismiss the action because the workers' compensation releases applied to "Southern California Pizza Co.," not the LLC. Elguea's counsel argued that, if anything, the entity released in the workers' compensation releases was the Inc., which had already been dismissed from this action by stipulation.

4. *Motion for Judgment on the Pleadings*

On February 3, 2017, the LLC and Rodriguez ("defendants") moved for judgment on the pleadings, based on the releases and, specifically, the broad language in the addenda. In support of the motion, defendants submitted a request for judicial notice, seeking judicial notice of the orders approving the workers' compensation releases (which incorporated the releases themselves). In order to foreclose Elguea's argument that the releases applied to the Inc. and not the LLC, defendants sought judicial notice of search results from the California Secretary of State websites, which reflect that there is only a single "Southern California Pizza" entity authorized to do business in California: the LLC.

5. *Elguea's Opposition*

Elguea opposed the motion for judgment on the pleadings on several grounds. First, he argued that the LLC was not the same entity as "Southern California Pizza Co.," which was the subject of the workers' compensation releases. He argued that counsel for the LLC had conceded they were different entities when he had convinced Elguea's counsel to dismiss the Inc. in this case.

Second, Elguea argued that he does not understand English and was never informed in the workers' compensation action that he was releasing his civil claims. Plaintiff submitted a declaration explaining, "When I was given the workers compensation settlement papers, the attorney did not speak Spanish, there was an interpreter. I was told that it was for the worker's compensation case and nothing else. I did inquire about my discrimination case and I was told that the worker's compensation settlement did not affect the discrimination case.

[¶] When I signed the papers which were in English, I did not know that they included a potential dismissal of the discrimination case, and I would not have signed them if I had known that was included." Based on this declaration, Elguea's opposition argued that he was "undoubtedly the victim of misrepresentation because the documents were not accurately translated for him." Since Elguea relied on a "translation which was undoubtedly incorrect," he was not bound by the waiver of his FEHA claims in the addendum to the releases.

Third, the releases did not release the current FEHA claims, because this action had been pending at the time of the releases and the releases did not specifically mention the action by name or case number.

Fourth, Elguea argued that an additional addendum to one, but not both, of the releases acted to exclude this case from the scope of the release. Addendum C, entitled "DENIED CASE," states, in full, as follows: "The parties request that a specific finding that a genuine and bona fide issue exists as to injury AOE/COE.[2] [¶] Defendant has denied injury AOE/COE for the following dates of injury: 9/1/2014-4/11/2014 [sic] AND 4/4/2007-2/27/2014. There is a serious and legitimate dispute as to industrial injury, the nature and extent of permanent disability, if any, and apportionment. There is a substantial possibility that adverse findings would totally bar the applicant's entitlement to any Workers' Compensation benefits related to these alleged injuries in the above referenced case. [¶] Defendant is prepared to offer the following evidence in support: [¶] 1. Applicant's

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2 The parties make no attempt to define "AOE/COE." It apparently refers to "arising out of employment/course of employment."

claim lacks substantial medical or factual evidence to support the alleged injury." Elguea argued that the April 11, 2014 date of constructive termination is included in the dates for which defendant "denied injury," and that by denying injury for those dates, defendant excluded any injury which occurred on those dates – those pled in the complaint – from the scope of the settlement.

Fifth, Elguea argued the intentional infliction of emotional distress cause of action survived the releases because it arose from illegal discrimination practices.

Finally, Elguea asserted that he was represented by counsel in the FEHA action at the time of the workers' compensation settlement, and nobody informed his FEHA counsel that the FEHA complaint was being addressed by the workers' compensation settlement. This was "improper" and Elguea argued that "this type of behavior" should not be condoned by granting judgment on the pleadings.

6. *Defendants' Reply*

In reply, defendants argued that if Elguea was poorly advised by his workers' compensation counsel, he would have a malpractice claim against that attorney; but it would not undermine enforcement of the release.

As to whether the LLC was released in the workers' compensation action, defendants argued that, as the LLC is the only "Southern California Pizza" entity authorized to do business in California, the LLC was the entity in the workers' compensation settlements. Defendants also argued that the Inc. was dismissed from this case because it had been the franchisor, not the employer. In any event, Elguea could not contend that

the LLC was his employer for the purposes of FEHA but the Inc. was his employer for the purposes of workers' compensation.

7. *Hearing on the Motion*

At the hearing, the parties again discussed the issue of the identity of the Pizza Hut entity named in the workers' compensation settlement, with Elguea's counsel agreeing that the Inc. was "the franchisor."

An additional issue which would arise on appeal is the characterization, at the hearing, of the workers' compensation judge's approval of the settlements. Defense counsel stated, "Plaintiff concedes that he had an attorney representing him, he had an interpreter present, and a worker's compensation law judge to make sure the settlement agreement was fair." We note that each of these three things, considered independently, is true. Elguea's counsel, however, took issue with any inference that all of these things occurred simultaneously at a hearing. Elguea's counsel explained that there was no hearing and that the "worker's compensation judge wasn't even present with the plaintiff."

8. *Judgment on the Pleadings is Granted*

On March 7, 2017, the court granted judgment on the pleadings without leave to amend. The court concluded that the addenda to the releases encompassed all of the causes of action asserted in the operative complaint in this case.

The court rejected Elguea's argument that the Southern California Pizza entity in the workers' compensation agreement was not the LLC. The court was persuaded by defendants' evidence that the LLC is the only "Southern California Pizza" entity authorized to do business in California, and therefore must have been the same "Southern California Pizza Company"

identified in the settlements. The court further explained, "Plaintiff cannot have it both ways. Plaintiff cannot have settled a variety of workers' compensation claims against his employer, sign a release and accept payment from that entity, and then sue a different entity claiming that entity is his actual employer."

As to Elguea's assertions that he did not understand the release, the interpretation was faulty, and his FEHA attorney had no notice of the workers' compensation settlement, these issues were not fatal to the enforcement of the release. "Plaintiff was represented by counsel, advised by an administrative law judge, and accepted the money relating to his release of all claims against Defendants." Any representations about excluding the civil action from the release, the court found, did not come from defendants.

9. *Notice of Appeal*

On April 4, 2017, plaintiff filed a timely notice of appeal.

10. *Elguea Seeks to Set Aside the Workers' Compensation Settlement*

On July 3, 2017, Elguea petitioned (in two of the four settled workers' compensation matters) to set aside the compromise and release. The merits of the WCAB denial of the petition to set aside the workers' compensation settlement are not before us.[3] However, the petition sets forth the following view of the history of the workers' compensation settlement. In September 2015, a $50,000 settlement of the workers' compensation cases was reached. At that point, Elguea told his workers' compensation counsel that he had a pending FEHA complaint and that he was receiving social security benefits.

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[3] We grant defendants' request for judicial notice of the WCAB denial of the petition.

Attorney Francis Sparagna informed him that the settlement would not impact the FEHA case. Elguea executed the $50,000 settlement, his attorney returned it to the employer's counsel with a cover letter indicating that Elguea was receiving social security benefits – a fact that would require additional procedural steps to be taken because the settlement exceeded $25,000. At that point, the employer chose not to go through with the settlement, and instead deposed Elguea. The original September 2015 settlement, which was executed by Elguea but not the employer, did not include an addendum encompassing FEHA actions. Over a year later, the parties settled the workers' compensation actions for two $25,000 payments rather than one $50,000 payment, apparently a device intended to avoid Medicare approval. That was to be the only change to the settlement. However, when the settlement agreements were sent to Elguea's attorney for plaintiff's signature, they included a "draconian addendum," which included the broad release. By coincidence, the attorney was out of state when the documents came in to the office, so he could not review them. Instead, another attorney in the firm, Diana Sparanga, signed the releases purportedly with the mistaken belief the documents tracked the documents reflected by the original negotiated agreement.[4]

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[4] In connection with their motion for attorney's fees, defendants would submit another exhibit – another version of the settlement agreement of the workers' compensation cases for $50,000, dated May 9, 2016. This compromise and release contained the addendum with the broad release language, including FEHA claims. The addendum is signed by Elguea, an attorney on his behalf (Linda Spinella), and an interpreter. This document, if it is what it purports to be, undermines both Elguea's assertion that he did not know what the addendum

11. *Costs and Attorney's Fees*

Defendants sought their costs and attorney's fees on the basis that this action was frivolous, or, at the very least, its continued pursuit became frivolous when defendants' counsel informed Elguea's counsel of the workers' compensation settlements.

Elguea's opposition barely addressed the issue of whether it had been frivolous to pursue the argument that the workers' compensation cases had been settled by the Inc. rather than the LLC. Instead it focused on the argument that the employer defendant (whomever it was) had sneaked the addendum with the broad release language into the settlement documents although the parties had not negotiated for it.

The court concluded that Elguea's continued litigation of this matter after counsel was informed of the workers' compensation releases was frivolous and would support an award of attorney's fees. However, the court denied fees as Elguea lacked the ability to pay. He was, however, required to pay defendants' costs. Neither party appealed from this order.

DISCUSSION

On appeal, Elguea contends the court erred in granting judgment on the pleadings, arguing: (1) the court's ruling was based on the mistaken factual finding that the workers' compensation judge had approved the settlements at a full hearing; (2) Elguea had been told the workers' compensation settlement would not reach the FEHA action; (3) the release does not extend to the FEHA action because no case number was identified; (4) there is an ambiguity in the workers' compensation

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stated, and Attorney Francis Sparagna's charge that the addendum was added at the last minute in November 2016.

releases, in that one relevant paragraph was stricken in one of the releases but not the other; (5) the "DENIED CASE" addendum excluded all injuries arising from the termination date from the scope of the settlement and this excluded the FEHA claims; (6) the intentional infliction of emotional distress cause of action survives the release; (7) the addendum with the broad release was surreptitiously added by the employer's counsel in the workers' compensation action with no negotiation and with no additional consideration; and (8) a factual dispute remains as to whether the workers' compensation releases released the LLC as opposed to the Inc.

Elguea also seeks reversal of the trial court's finding, in connection with its ruling on the attorney's fees motion, that continued pursuit of this action was frivolous. However, Elguea has provided no authority for the proposition that the finding alone is reviewable on appeal from the prior judgment on the pleadings. We therefore do not reach the issue.

1. *Standard of Review*

"Review of a judgment on the pleadings is governed by the same standard applicable to review of a judgment of dismissal based on an order sustaining a general demurrer. The appellate court examines the face of the pleadings, together with matters subject to judicial notice, to determine whether the facts are sufficient to constitute a cause of action. [Citation.] The plaintiff's allegations are accepted as true. [Citation.]" (*Croeni v. Goldstein* (1994) 21 Cal.App.4th 754, 758.)

In this case, defendants proceeded by means of a motion for judgment on the pleadings when the parties at least inferentially recognized a motion for summary judgment would have been the more appropriate vehicle. Elguea opposed the motion with

declarations from himself and his attorney – documents which are outside consideration on a motion for judgment on the pleadings. Nonetheless, the trial court considered whether the declarations raised issues which would defeat the issues raised in the motion, and, as no objections were interposed by either party, we consider the record as presented to us.

2. *Applicable Law Governing the Scope of Workers' Compensation Releases*

The law in this area is settled. Workers' compensation releases are required to be on a standard form. When an injured worker executes the preprinted form, the worker does not release any claims that are not within the scope of workers' compensation law. (*Claxton v. Waters* (2004) 34 Cal.4th 367, 370.) Specifically, the standard workers' compensation release does not reach FEHA claims. (*Id.* at pp. 373, 376.) However, if the parties to the workers' compensation proceeding include in their release an addendum which reflects an intention to reach beyond workers' compensation, that addendum may be given effect and may encompass FEHA claims. (*Jefferson v. Department of Youth Authority* (2002) 28 Cal.4th 299, 301 (*Jefferson*).) Settlement agreements, of course, are contracts, and are interpreted under general provisions of contract law. (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165.) Thus, whether language in a workers' compensation settlement encompasses FEHA claims is an issue of contract interpretation which we review de novo. (*Jefferson, supra,* at p. 305.)

The *Jefferson* case in instructive. There, a plaintiff alleging sexual harassment sought workers' compensation for the psychological injuries she suffered from the harassment. (*Jefferson, supra,* 28 Cal.4th at pp. 301-302.) After she had

received her right to sue letter, but before she filed her FEHA complaint, the plaintiff settled her workers' compensation action. (*Id.* at p. 302.) An attachment to the standard release form included plaintiff's agreement that the defendants wanted to buy their peace, and that the settlement applied to all aspects of all injuries identified, and also encompassed unknown and unanticipated injuries. The agreement did not expressly mention FEHA claims. (*Id.* at pp. 302-303.) The workers' compensation appeals board approved the compromise and release. Three weeks later, the plaintiff filed her FEHA action. (*Id.* at p. 303.) The defendants obtained summary judgment in the FEHA action based on the workers' compensation release, and our Supreme Court affirmed. (*Ibid.*) The court explained, " ' "The general rule is that when a person with the capacity of reading and understanding an instrument signs it, he is, in the absence of fraud and imposition, bound by its contents, and is estopped from saying that its provisions are contrary to his intentions or understanding." ' [Citation.] We have been particularly rigorous about strictly enforcing broad release language in workers' compensation settlements, because, in that context, WCAB oversight helps to ensure fairness. [Citation.] At the same time, however, we have sought to protect the interests of workers who execute workers' compensation settlement documents without a full appreciation of what claims or rights might later arise. [Citation.] We conclude that the broad settlement language at issue here is enforceable as written. Two points in particular support our conclusion: (1) the parties included an attachment in their settlement agreement that made clear their intent to settle matters outside the scope of workers' compensation; and (2) Jefferson offered no extrinsic evidence establishing the

parties' intent to exclude her FEHA claim from the settlement." (*Id.* at pp. 303-304.)

The *Jefferson* court distinguished *Asare v. Hartford Fire Ins. Co.* (1991) 1 Cal.App.4th 856. In *Asare*, the plaintiff argued that a workers' compensation release did not extend to FEHA claims. The plaintiff relied on a declaration of his workers' compensation counsel that when the workers' compensation case was settled, he and the employer's counsel were aware of the pending FEHA claim and had both agreed that the workers' compensation release would not be interpreted as a bar to the FEHA claim. (*Id.* at p. 861.) *Jefferson* found *Asare* distinguishable on the basis that, in *Asare*, there was extrinsic evidence of an oral agreement that the settlement did not cover the FEHA action. (*Jefferson, supra,* 28 Cal.4th at p. 308.)[5]

Given this controlling authority, we easily resolve the issues raised by Elguea on appeal. We start with the premise that *Jefferson* governs this case. Indeed, this case is stronger than *Jefferson*, in that the addendum to the workers' compensation releases Elguea signed here *expressly encompasses* FEHA claims. In short, the trial court correctly concluded that a release which specifically includes FEHA claims does, in fact, release FEHA claims. We now briefly turn to each of Elguea's arguments as to why the trial court's conclusion was faulty.

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[5] The *Asare* release at issue was the standard workers' compensation release. The defendant there took the position that the broad language of that release encompassed the FEHA claim. *Claxton v. Waters, supra,* 34 Cal.4th at page 370, later held that the standard workers compensation release in itself cannot be interpreted to include claims outside of workers' compensation, and overruled *Asare* to the extent it held otherwise. (*Id.* at p. 379.)

A. *Lack of a Full WCAB Hearing is Irrelevant*

Elguea first argues that the trial court granted judgment on the pleadings based on a misunderstanding that there had been a full hearing before the workers' compensation administrative law judge who approved the releases, not just that the ALJ simply approved the settlement on the papers. The argument seems to turn on a single word in the court's order; that is, the trial court stated that plaintiff "was represented by counsel, *advised* by an administrative law judge, and accepted the money relating to his release of all claims against Defendants." (Emphasis added.) To be sure, Elguea was not "advised" by the ALJ; the documents simply indicate the ALJ approved the executed compromises and releases "having considered the entire record" in those cases. But this is exactly what occurred in *Jefferson* – the WCAB "approved the compromise and release 'having considered the entire record,' including the medical record." (*Jefferson, supra,* 28 Cal.4th at p. 303.) The Supreme Court held that "WCAB oversight helps to ensure fairness." (*Id*. at p. 304.) Here, just as in *Jefferson*, the ALJ's review constituted "oversight" to help ensure fairness. No hearing was required.

B. *Counsel's Statement to Elguea that the Settlement Would Not Reach the FEHA Action, Even if True, is Irrelevant*

Elguea argues that the releases did not reach the FEHA action because he was told by his counsel that they did not. But even if both Elguea and his counsel believed the releases did not cover the FEHA action, their subjective belief does not undermine the objective language of the releases. There was no evidence that counsel for the two sides agreed to exclude the FEHA action.

A party's uncommunicated understanding of the contract language is irrelevant. (*Steller v. Sears, Roebuck and Co.* (2010) 189 Cal.App.4th 175, 184.) The terms of a contract are determined by objective, not subjective criteria. The question is what the parties' objective manifestations of agreement or objective expressions of intent would lead a reasonable person to believe. Undisclosed intent or understanding is irrelevant to contract interpretation. (*Id.* at pp. 184-185.) The objective terms are clear.

C. *The Releases Reach the FEHA Action Even Though They Do Not Identify the FEHA Action by Case Number*

Elguea does not quite argue that the releases had to identify the FEHA action by case number, as a matter of law, in order to release it. Instead, he argues that the addenda were "intentionally vague" because they did not formally describe the pending civil action. "Why didn't the employer include the actual civil case number in the addendum? Simply because that would have drawn everyone's attention to the fact that the employer was trying to include the civil case, without any additional compensation or consideration and the [plaintiff's] workers compensation attorney would not have agreed to that."

There is no ambiguity; the single-page addendum includes a paragraph beginning with: "This Compromise & Release also includes resolution of all claims arising under any state or federal law regulation, including the California Fair Employment and Housing Act, . . ." As the addendum specifically identified FEHA, and other claims, its failure to identify the case by name or number creates no ambiguity.

Elguea's argument is based on a misinterpretation of *Jefferson*. Elguea argues that in *Jefferson*, "no civil action had been filed at the time of the compromise and release, so there was no indication of an intention by the employee to proceed to a civil case. Here, the civil case had been pending for 8 months, but there was no reference to it in the addendum." But in *Jefferson*, the plaintiff had received her right to sue letter some nine months before the workers' compensation settlement – even though she had not yet filed suit at the time of the settlement. (*Jefferson*, *supra*, 28 Cal.4th at p. 302.) In concluding that the release of "all claims and causes of action" encompassed the subsequently-filed FEHA claim, the Supreme Court noted that, at the time of the settlement, the plaintiff was well aware of the possibility of FEHA damages because she already filed with the Department of Fair Employment and Housing "and therefore not only contemplated the possibility of FEHA remedies but was also actively pursuing those remedies." (*Id.* at p. 305.) In short, the fact that Jefferson was "actively pursuing" her FEHA remedies was a factor in favor of the court's conclusion that the FEHA remedies were intended to be encompassed by the broad release in that case. Similarly, that Elguea had already filed his FEHA action supports the conclusion that the action was encompassed by the settlement.

D. *There is No Fatal Ambiguity in the Releases by the Apparent Striking of a Paragraph in One Release but Not in the Other*

The standard workers' compensation release contains paragraph 3, which provides: "This agreement is limited to the settlement of the body parts, conditions, or systems and for the dates of injury set forth in Paragraph No. 1 [which identified the

four actions and the claimed injuries] and further explained in Paragraph 9 [which identifies the disputed issues] despite any language to the contrary elsewhere in this document or any addendum." In one of the two releases, there are lines through the paragraph; the paragraph in the other release is unaltered.

Elguea argues that the presence of a stricken paragraph in one release but not the other creates a fatal ambiguity. Elguea did not raise this argument before the trial court in connection with the motion for judgment on the pleadings; it is therefore waived. We also observe there was no evidence as to who or under what circumstances the hash marks were placed on the one document. The fact remains that even under Elguea's theory at least one document released Elguea's FEHA and related claims.

E. *The "DENIED CASE" Addendum, By Its Terms, Is No Bar*

Elguea next contends that the "DENIED CASE" addendum in one of the releases somehow excludes the date of constructive termination from the scope of the releases. We disagree. The "DENIED CASE" addendum states that defendant "has denied injury AOE/COE for the following dates of injury: 9/1/2014-4/11/2014 [sic] AND 4/4/2007-2/27/2014. There is a serious and legitimate dispute as to industrial injury, the nature and extent of permanent disability, if any, and apportionment." A denial of injury is simply an acknowledgement that a bona fide dispute exists, it is not an exclusion of injury from the scope of the release. Parties can settle claims without one admitting liability.

F. *Intentional Infliction of Emotional Distress was Also Released*

Elguea argues that the intentional infliction of emotional distress cause of action was not within the scope of the release. But the language of the release was broad enough to encompass that cause of action. We repeat the key language: "This Compromise & Release also includes resolution of all claims arising under any state or federal law regulation, including the California Fair Employment and Housing Act, . . . and any other claims relating to or arising out of the relationship between Applicant and Defendant, and any and all alleged injuries Applicant may have suffered arising out of that relationship and those dealings up to and including the date Applicant executes this Compromise & Release." The cause of action for intentional infliction of emotional distress arises out of the employment relationship. It is therefore included in the release.

G. *There is No Viable Claim of Fraud in the Procurement of the Release*

Elguea next argues that the addendum with the broad release was surreptitiously added by the employer's counsel in the worker's compensation action with no negotiation and with no additional consideration – and Elguea only signed it because of the coincidence that he did not understand English and Attorney Francis Sparagna was out of town and unable to properly advise him when a revised release came into the office.

" 'It is well established, in the absence of fraud, overreaching or excusable neglect, that one who signs an instrument may not avoid the impact of its terms on the ground that he failed to read the instrument before signing it.'

[Citations.]" (*Randas v. YMCA of Metropolitan Los Angeles* (1993) 17 Cal.App.4th 158, 163.)

When the trial court ruled on the motion for judgment on the pleadings, the evidence of Attorney Francis Sparagna's petition to set aside the settlement was not before the court; the only evidence supporting Elguea's claim of fraud in the inducement was his declaration that he does not understand English and he had been told the release did not extend to his FEHA claim. In other words, Elguea's fraud argument was that his own attorney had misinterpreted, or had obtained a mistranslation of, the language of the release. That does not allege, let alone establish, employer fraud sufficient to defeat the release.

It was not until Elguea's opposition to defendants' motion for costs and attorney's fees that Elguea raised the argument that the employer had added the broad release without Elguea's counsel's agreement. This untimely submission is insufficient to defeat the prior judgment on the pleadings.[6]

H. *The LLC was Released*

Elguea's final argument is that a triable issue exists as to whether the LLC was released by the workers' compensation release, because that release identified "Southern California Pizza Company," which may well have meant the Inc., not the LLC. But defendants established, with evidence of which the trial court took judicial notice, that there is only one Southern California Pizza entity authorized to do business in California, and it is the LLC. More to the point, Elguea had a single

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[6] We observe in footnote 4, ante, that documents defendants submitted at the costs and attorney fees motion defeat Elguea's claim of employer shenanigans.

employer. Whether Inc. or LLC, his employer was the entity who settled the workers' compensation actions and it was this employer whom Elguea sued in the civil action. As with horses, one cannot change employers in midstream.

DISPOSITION

The judgment is affirmed. Elguea is to pay defendants' costs on appeal.

RUBIN, ACTING P. J.

WE CONCUR:

GRIMES, J.

ROGAN, J.*

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.